

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

Crl.MC.No. 2721 of 2007()

AGAINST THE ORDER DATED 12/06/2007 IN CRMP. 1606 /2007 IN
SC.40/2006 of ADDL. SESSIONS COURT (ADHOC-2), THRISSUR
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PETITIONER/2ND ACCUSED:

VARGHESE, S/O PAILY,
PALLIPADAN HOUSE, MANNUTHY DESOM,
OLLUKARA VILLAGE.

BY ADV. SRI.K.A.SREEJITH

RESPONDENT/COMPLAINANT:

STATE OF KERALA, REPRESENTED BY
EXCISE INSPECTOR, THRISSUR RANGE, THROUGH
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.KAMMAPPU

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 05/09/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2721 of 2007

Dated this the 5th day of September 2007

O R D E R

The petitioner is the second accused in a prosecution under Section 55(a) of the Abkari Act. Investigation was completed and the final report was filed by the investigating officer. The trial before the learned Sessions Judge has commenced also. At that stage, the Prosecutor made a request that powers under Section 311 Cr.P.C may be invoked and ten bottles each from MO1 series, MO2 series, MO3 series and MO4 series may be sent for chemical analysis. It was submitted that in the light of the subsequent decision in Krishnankutty v. State of Kerala 2005(3) KLT 568, it had become necessary for the prosecution to make such a request. The learned Sessions Judge, by the impugned order (a copy of which is produced as Anenxure A2), granted the said request. The petitioner claims to be aggrieved by Annexure A2 order.

2. What is the grievance? The learned counsel for the petitioner submits that the court was only helping the

prosecution to fill up the lacuna and plug the gaps in the prosecution case. By doing so, the learned Sessions Judge has deprived the petitioner of the right and opportunity to take up a defence in the light of Krishnankutty v. State of Kerala 2005(3) KLT 568. This procedure followed by the learned Sessions Judge is incorrect and does warrant interference. The impugned order may be set aside, it is prayed.

3. I have been taken through the impugned order. The learned Sessions Judge has adverted to all the relevant aspects. The learned Sessions Judge has taken note of the provisions of Section 311 Cr.P.C and Section 165 of the Evidence Act. Acquittal of the innocent and the conviction of the guilty are the two inseparable duties of a criminal court. The necessity of one is not to be squandered at the alter of the other. The learned Sessions Judge has rightly noted that the investigator cannot be found fault with for not making such a request earlier as the requirement came to light only in the light of the said decision in Krishnankutty v. State of Kerala 2005(3)KLT 568. There was absolutely no attempt to fill up the lacuna or plug the gaps in the prosecution case. Interests of truth and justice certainly

demanding that a proper analysis of the contraband article was conducted and relevant data was made available before the trial court. The learned Sessions Judge, in passing the impugned order, has not committed any error. At any rate, no failure or miscarriage of justice can be said to have resulted by the impugned order. The learned Sessions Judge has ample powers under Section 311 Cr.P.C and 165 Evidence Act to justify the passing of the impugned order.

4. This Criminal Miscellaneous Case is in these circumstances dismissed.

(R.BASANT, JUDGE)

jsr

// True Copy//

PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007